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# HOUSE BILL No. 1209

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** None (noncode).

**Synopsis:** Review of sentences of certain habitual offenders. Allows a person: (1) convicted of certain felonies involving controlled substances; and (2) sentenced as a habitual offender; to petition the sentencing court to vacate any additional fixed term of imprisonment added to the person's sentence because the person was found to be a habitual offender. Requires the court to order the department of correction (department) to determine the person's new expected release date if the court vacates an additional fixed term of imprisonment added to the person's sentence. Requires the department to release the person if the department determines that the person's release date occurred before the date the court vacated the person's sentence. Prohibits a person from bringing an action against the state or an employee of the state if the department determines that the person's release date occurred before the date the court vacated the person's sentence.

**Effective:** July 1, 2008.

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### Smith V

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January 14, 2008, read first time and referred to Committee on Judiciary.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1209

A BILL FOR AN ACT concerning sentences for habitual offenders.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. [EFFECTIVE JULY 1, 2008] (a) **Notwithstanding**  
2       **P.L.291-2001, SECTION 228(b), this SECTION applies to a person**  
3       **if:**

4               (1) **the person was found to be and sentenced as a habitual**  
5               **offender under IC 35-50-2-8;**

6               (2) **the felony offense for which the person was sentenced as a**  
7               **habitual offender under IC 35-50-2-8 was:**

8                       (A) **an offense under IC 16-42-19 or IC 35-48-4; and**

9                       (B) **not listed in IC 35-50-2-2(b)(4) (as in effect July 1,**  
10                      **2001); and**

11              (3) **at the time the person was sentenced as a habitual offender**  
12              **under IC 35-50-2-8, the total number of unrelated convictions**  
13              **that the person had for:**

14                      (A) **dealing in or selling a legend drug under**  
15                      **IC 16-42-19-27;**

16                      (B) **dealing in cocaine or a narcotic drug (IC 35-48-4-1);**

17                      (C) **dealing in a schedule I, II, or III controlled substance**  
18                      **(IC 35-48-4-2);**



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1 (D) dealing in a schedule IV controlled substance  
2 (IC 35-48-4-3); and

3 (E) dealing in a schedule V controlled substance  
4 (IC 35-48-4-4);

5 did not exceed one (1).

6 (b) A person described in subsection (a) may petition the  
7 sentencing court to have the person's sentence reviewed. Upon  
8 receipt of a petition submitted under this subsection, if the court  
9 finds that the person who submitted the petition is a person  
10 described in subsection (a), the court shall vacate any additional  
11 fixed term of imprisonment added to the person's sentence under  
12 IC 35-50-2-8.

13 (c) If, under subsection (b), a court vacates an additional fixed  
14 term of imprisonment added to a person's sentence, the court shall  
15 order the department of correction to determine the person's new  
16 expected release date. If the department determines that the  
17 person's release date occurred before the date the court vacated  
18 the person's sentence under subsection (b), the department shall  
19 release the person.

20 (d) This SECTION does not create a cause of action against the  
21 state or an employee of the state. A person may not bring an action  
22 against the state or an employee of the state if the department of  
23 correction determines under subsection (c) that the person's  
24 release date occurred before the date the court vacated the  
25 person's sentence under subsection (b).

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